



Reprinted  
February 28, 2001

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## HOUSE BILL No. 1578

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DIGEST OF HB 1578 (Updated February 27, 2001 12:06 PM - DI 92)

**Citations Affected:** IC 6-3.1; IC 6-5.5; IC 6-6; IC 6-8.1; IC 8-2.1; IC 9-13; IC 9-20; IC 9-24; IC 9-29; noncode.

**Synopsis:** State tax administration and motor vehicles. Provides that for purposes of the gross income tax, a unitary group does not include an entity that does not transact business in Indiana. Changes the dates by which estimated quarterly financial institutions tax returns must be filed. Repeals the requirement that the department of state revenue must issue transporter emblems for certain vehicles transporting gasoline. Specifies that the department may enter into the International Fuel Tax Agreement. Makes related changes. Provides that if a notice of proposed assessment is returned because a taxpayer has moved and the department is unable to determine the taxpayer's new address, the department may make an assessment for taxes without providing  
(Continued next page)

**Effective:** July 1, 2001; January 1, 2002; July 1, 2002.

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### Cochran, Denbo

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January 11, 2001, read first time and referred to Committee on Ways and Means.  
February 19, 2001, amended, reported — Do Pass.  
February 27, 2001, read second time, amended, ordered engrossed.

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HB 1578—LS 7956/DI 73+



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certain notices that would otherwise be required. Provides that a driver who commits certain serious traffic violations related to railroad crossings while operating a commercial motor vehicle is disqualified from driving such a vehicle for specified periods. Provides that a pass through entity is a taxpayer for purposes of claiming the prison investment tax credit. Provides that when a circuit court clerk enters a tax warrant in the judgment record, the total amount of the tax warrant becomes a judgment against the person owing the tax. (Current law provides that the total amount of the tax warrant becomes a judgment lien against the person owing the tax.) Makes conforming changes. Provides that a judgment arising from a tax warrant is enforceable in the same manner as any judgment issued by a court of general jurisdiction. Provides that the department of state revenue may initiate proceedings supplemental in any court of general jurisdiction in a county in which a judgment arising from a tax warrant has been recorded. Requires the owners of commercial motor vehicles having a gross vehicle weight of more than 80,000 but less than 134,000 pounds to: (1) register annually with the department of state revenue; (2) install an electronic device for tracking the location of the vehicles; and (3) pay an annual registration fee. Provides that civil penalties may be imposed for the failure to comply with the registration requirement. Provides that the civil penalties must be deposited into the motor carrier regulation fund. Allows a credit for commercial vehicle excise taxes paid on a vehicle if: (1) the owner sells the vehicle and purchases a new vehicle of the same or greater weight; (2) the vehicle is destroyed and replaced with a vehicle of the same or greater weight; or (3) the vehicle was erroneously registered at a greater weight than required.

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Reprinted  
February 28, 2001

First Regular Session 112th General Assembly (2001)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

## HOUSE BILL No. 1578

A BILL FOR AN ACT to amend the Indiana Code concerning  
taxation.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 6-3.1-6-1 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JANUARY 1, 2002]: Sec. 1. For the  
3 purposes of this chapter:  
4 "Agreement" means any agreement entered into with the  
5 commissioner of the department of correction under IC 11-10-7-2 that  
6 has been approved by a majority of the members of the state board of  
7 correction.  
8 "Pass through entity" means a:  
9 (1) corporation that is exempt from the adjusted gross income  
10 tax under IC 6-3-2-2.8(2);  
11 (2) partnership;  
12 (3) trust;  
13 (4) limited liability company; or  
14 (5) limited liability partnership.  
15 "Qualified property" means any machinery, tools, equipment,  
16 building, structure, or other tangible property considered qualified  
17 property under Section 38 of the Internal Revenue Code that is used as

HB 1578—LS 7956/DI 73+



an integral part of the operation contemplated by an agreement and that is installed, used, or operated exclusively on property managed by the department of correction.

"State income tax liability" means a taxpayer's total income tax liability incurred under IC 6-2.1 and IC 6-3, as computed after application of credits that, under IC 6-3.1-1-2, are to be applied before the credit provided by this chapter.

**"Taxpayer" means any person, corporation, limited liability company, partnership, or other entity that has state tax liability. The term includes a pass through entity.**

"Wages paid" includes all earnings surrendered to the department of correction under IC 11-10-7-5.

SECTION 2. IC 6-3.1-6-6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2002]: **Sec. 6. If a pass through entity is entitled to a credit under this chapter but does not have state tax liability against which the tax credit may be applied, an individual who is a shareholder, partner, beneficiary, or member of the pass through entity is entitled to a tax credit equal to:**

- (1) the tax credit determined for the pass through entity for the taxable year; multiplied by
- (2) the percentage of the pass through entity's distributive income to which the shareholder, partner, beneficiary, or member is entitled.

**The credit provided under this section is in addition to a tax credit to which a shareholder, partner, beneficiary, or member of a pass through entity is entitled. However, a pass through entity and an individual who is a shareholder, partner, beneficiary, or member of a pass through entity may not claim more than one (1) credit for the qualified expenditure.**

SECTION 3. IC 6-5.5-1-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2002]: **Sec. 18. (a) "Unitary business" means business activities or operations that are of mutual benefit, dependent upon, or contributory to one another, individually or as a group, in transacting the business of a financial institution. The term may be applied within a single legal entity or between multiple entities and without regard to whether each entity is a corporation, a partnership, a limited liability company, or a trust, provided that each member is either a holding company, a regulated financial corporation, a subsidiary of either, a corporation that conducts the business of a financial institution under IC 6-5.5-1-17(d)(2), or any other entity, regardless of its form, that conducts activities that would constitute the**



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business of a financial institution under IC 6-5.5-1-17(d)(2) if the activities were conducted by a corporation. The term "unitary group" includes those entities that are engaged in a unitary business transacted wholly or partially within Indiana. **However, the term does not include an entity that does not transact business in Indiana.**

(b) Unity is presumed whenever there is unity of ownership, operation, and use evidenced by centralized management or executive force, centralized purchasing, advertising, accounting, or other controlled interaction among entities that are members of the unitary group, as described in subsection (a). However, the absence of these centralized activities does not necessarily evidence a nonunitary business.

(c) Unity of ownership, when a corporation is involved, does not exist unless that corporation is a member of a group of two (2) or more business entities and more than fifty percent (50%) of the voting stock of each member of the group is directly or indirectly owned by:

(1) a common owner or common owners, either corporate or noncorporate; or

(2) one (1) or more of the member corporations of the group.

SECTION 4. IC 6-5.5-6-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 3. (a) Each taxpayer subject to taxation under this article shall report and pay quarterly an estimated tax equal to twenty-five percent (25%) of the taxpayer's total estimated tax liability imposed by this article for the taxable year. ~~The quarterly~~ **A taxpayer that uses a taxable year that ends on December 31 shall file the taxpayer's estimated payments shall be made quarterly financial institutions tax return and pay the tax to the department on or before the last day of the month for the quarter ending on the last day of the preceding month; April 20, June 20, September 20, and December 20 of the taxable year, without assessment or notice and demand from the department. If a taxpayer uses a taxable year that does not end on December 31, the due dates for filing the estimated quarterly financial institutions tax return and paying the tax are on or before the twentieth day of the fourth, sixth, ninth, and twelfth months of the taxpayer's taxable year.** The department shall prescribe the manner and furnish the forms for reporting and payment.

(b) Subsection (a) is applicable only to taxpayers having a tax liability imposed under this article that exceeds one thousand dollars (\$1,000) for the taxable year.

(c) If the department determines that a taxpayer's:

(1) estimated quarterly financial institutions tax liability for the



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current year; or

(2) average quarterly financial institutions tax payment for the preceding year;

exceeds ten thousand dollars (\$10,000), the taxpayer shall pay the quarterly financial institutions taxes due by electronic fund transfer (as defined in IC 4-8.1-2-7) or by delivering in person or by overnight courier a payment by cashier's check, certified check, or money order to the department. The transfer or payment shall be made on or before the date the tax is due.

(d) If a taxpayer's financial institutions tax payment is made by electronic fund transfer, the taxpayer is not required to file a quarterly financial institutions tax return.

SECTION 5. IC 6-6-1.1-606.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2002]: Sec. 606.5. (a) Every person included within the terms of section 606(a) and 606(c) of this chapter shall register with the administrator before engaging in those activities. The administrator shall issue a transportation license to a person who registers with the administrator under this section.

(b) Every person included within the terms of section 606(a) of this chapter who transports gasoline in a vehicle on the highways in Indiana for purposes other than use and consumption by that person may not make a delivery of that gasoline to any person in Indiana other than a licensed distributor except:

(1) when the tax imposed by this chapter on the receipt of the transported gasoline was charged and collected by the parties; and

(2) under the circumstances described in section 205 of this chapter.

(c) Every person included within the terms of section 606(c) of this chapter who transports gasoline in a vehicle upon the highways of Indiana for purposes other than use and consumption by that person may not, on the journey carrying that gasoline to points outside Indiana, make delivery of that fuel to any person in Indiana.

(d) Every transporter of gasoline included within the terms of section 606(a) and section 606(c) of this chapter who transports gasoline upon the highways of Indiana for purposes other than use and consumption by that person shall at the time of registration and on an annual basis list with the administrator a description of all vehicles, including the vehicles' license numbers, to be used on the highways of Indiana in transporting gasoline from:

(1) points outside Indiana to points inside Indiana; and

(2) points inside Indiana to points outside Indiana.

(e) The description that subsection (d) requires shall contain the

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information that is reasonably required by the administrator including the carrying capacity of the vehicle. When the vehicle is a tractor-trailer type, the trailer is the vehicle to be described. When additional vehicles are placed in service or when a vehicle previously listed is retired from service during the year, the administrator shall be notified within ten (10) days of the change so that the listing of the vehicles may be kept accurate.

(f) ~~The department shall issue a transporter emblem for each vehicle that is listed with the administrator under this section. The department shall issue new transporter emblems at the time that the annual list is provided under subsection (d):~~

(g) ~~It is unlawful for a person to transport gasoline in a vehicle with a total tank capacity of at least eight hundred fifty (850) gallons on the highways from any point in Indiana to another point in Indiana without displaying an emblem issued by the department under this section:~~

~~(h)~~ (f) A distributor's or an Indiana transportation license is required for a person or the person's agent acting in the person's behalf to operate a vehicle for the purpose of delivering gasoline within the boundaries of Indiana when the vehicle has a total tank capacity of at least eight hundred fifty (850) gallons.

~~(i)~~ (g) The operator of a vehicle to which this section applies shall at all times when engaged in the transporting of gasoline on the highways have with the vehicle an invoice or manifest showing the origin, quantity, nature, and destination of the gasoline that is being transported.

SECTION 6. IC 6-6-4.1-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 14. (a) The commissioner or, with ~~his~~ **the commissioner's** approval, the reciprocity commission created by IC 9-28-4 may enter into ~~a and become a member of the International Fuel Tax Agreement or other reciprocal agreement agreements~~ with the appropriate official or officials from any other state or jurisdiction under which all or any part of the requirements of ~~this chapter~~ **the Indiana Administrative Code** are waived with respect to motor carriers that use in Indiana motor fuel upon which tax has been paid to the other state or jurisdiction. An agreement may be made under this subsection only with a state or jurisdiction that grants equivalent privileges with respect to motor fuel consumed in the other state or jurisdiction and on which a tax has been paid to this state.

(b) The commissioner or, with ~~his~~ **the commissioner's** approval, the reciprocity commission created by IC 9-28-4 may enter into ~~a the International Fuel Tax Agreement or other reciprocal agreement~~



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**agreements** with the appropriate official or officials of any other state or jurisdiction to exempt commercial motor vehicles licensed in the other state or jurisdiction from any of the requirements that would otherwise be imposed by this chapter, including the requirements for trip permits, temporary authorizations, repair and maintenance permits, and annual permits and the payment of fees for permits and authorizations. An agreement may be made under this subsection only with a state or jurisdiction that grants equivalent exemptions to motor vehicles licensed in Indiana.

SECTION 7. IC 6-6-4.1-14.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 14.5. (a) The International Fuel Tax Agreement and any other fuel tax agreement authorized under IC 6-6, IC 6-8.1, or IC 9-28 shall be limited to the following matters:**

- (1) Determining the base state for users.**
- (2) Specifying records requirements for users.**
- (3) Specifying audit procedures.**
- (4) Exchanging information.**
- (5) Defining persons eligible for tax licensing.**
- (6) Defining qualified motor vehicles.**
- (7) Determining if bonding is required.**
- (8) Specifying reporting requirements and periods, including the following:**
  - (A) Establishing uniform penalties and interest rates for late reporting.**
  - (B) Determining methods for collecting and forwarding motor fuel taxes, special fuel taxes, and penalties to another state or jurisdiction.**
- (9) Any other provisions designed to facilitate the administration of the agreement.**

**(b) The International Fuel Tax Agreement and any other fuel tax agreement authorized under IC 6-6, IC 6-8.1, or IC 9-28 do not limit the authority of the general assembly to do any of the following:**

- (1) Determine whether to impose a tax.**
- (2) Determine tax rates.**
- (3) Define tax exemptions or deductions.**
- (4) Determine what constitutes a taxable event that results in the imposition of a tax.**
- (5) Determine any other matters related to the powers described in subdivisions (1) through (4).**



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SECTION 8. IC 6-6-4.1-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 16. The department may enter into **the International Fuel Tax Agreement or any other** agreements for:

(1) **furnishing information to and receiving information from other states, jurisdictions, or the International Fuel Tax Agreement clearinghouse, except as prohibited by IC 6-8.1-3-7; and**

(2) the cooperative audit of the reports and returns of carriers with the appropriate authorities of any other state or jurisdiction that imposes a tax similar to the tax imposed under this chapter.

An officer or employee of another state or jurisdiction who audits reports and returns under an agreement made under this ~~section~~ **chapter or IC 6-8.1-3-12** is considered an authorized agent of this state for the purpose of the audit. A cooperative audit conducted under an agreement made under this section has the same effect as an audit conducted by the department.

SECTION 9. IC 6-6-4.1-22 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 22. (a) If a person:

- (1) fails to file a return for taxes due under this chapter;
  - (2) fails to pay the full amount of tax shown on the person's return by the due date for the return or the payment; or
  - (3) incurs a deficiency upon a determination by the department;
- the person is subject to interest on the nonpayment.

(b) The interest for a failure described in subsection (a) is the rate of interest calculated under the interest provisions of the ~~Base State~~ **International Fuel Tax Agreement** entered into by the department under IC 6-8.1-3-14.

SECTION 10. IC 6-6-4.1-23 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 23. (a) If a person:

- (1) fails to file a return for the tax due under this chapter on or by the due date for the return;
- (2) fails to pay the full amount of tax shown on the person's return on or by the due date for the payment; or
- (3) incurs, upon examination by the department, a deficiency that is due to negligence;

the person is subject to a penalty.

(b) The penalty for a failure described in subsection (a) is the penalty calculated under the penalty provisions of the ~~Base State~~ **International Fuel Tax Agreement** entered into by the department under IC 6-8.1-3-14.

SECTION 11. IC 6-6-4.1-24 IS AMENDED TO READ AS



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FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 24. (a) If the department believes that a person has not reported the proper amount of tax due, the department shall make a proposed assessment of the amount of the unpaid tax on the basis of the best information available to the department. The amount of the assessment is:

- (1) considered a tax payment not made by the due date;
- (2) subject to sections 22 and 23 of this chapter; and
- (3) subject to IC 6-8.1-10 concerning the imposition of penalties and interest.

(b) The department shall issue notice and prescribe a period for payment and protest under the provisions of the ~~Base State~~ **International** Fuel Tax Agreement entered into by the department pursuant to IC 6-8.1-3-14. The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made. If the person files a protest and requires a hearing on the protest, the department shall set the hearing at the department's earliest convenient time and shall notify the person by United States mail of the time, date, and location of the hearing. The department may hold the hearing at the location of the department's choice in Indiana.

SECTION 12. IC 6-6-4.1-25 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 25. This section applies whenever the owner is required by law to obtain an annual motor carrier fuel tax permit or a license under ~~a base state~~ **the International** Fuel Tax Agreement under IC 6-8.1-3-14 from the department. The bureau of motor vehicles may not register or license a motor bus, truck, tractor, trailer, or semitrailer used or intended to be used by the owner for transportation of property until the owner furnishes the bureau of motor vehicles with reasonable proof that the owner has a permit or license issued by the department.

SECTION 13. IC 6-6-4.1-26 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 26. A special permit may not be issued under IC 9-20-6 to a carrier that is required to be registered under this chapter or under ~~a Base State~~ **the International** Fuel Tax Agreement under IC 6-8.1-3-14 until the carrier furnishes reasonable proof of registration:

- (1) under this chapter or under ~~a Base State~~ **the International** Fuel Tax Agreement under IC 6-8.1-3-14; and
- (2) under IC 9-18-2, if applicable.

SECTION 14. IC 6-6-5.5-8.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS



[EFFECTIVE JULY 1, 2001]: Sec. 8.5. (a) The owner of a vehicle for which the commercial vehicle excise tax has been paid for the registrant's annual registration year is entitled to a credit if during that registration year:

- (1) the owner sells the vehicle and purchases a new vehicle of the same or greater weight;
- (2) the vehicle is destroyed and replaced with a vehicle of the same or greater weight; or
- (3) the vehicle was registered in error at a greater weight than required.

(b) Except as provided in subsection (c), the amount of the credit is equal to the remainder of:

- (1) the commercial vehicle excise tax paid for the vehicle, reduced by;
- (2) one-twelfth (1/12) for each full or partial calendar month that has elapsed in the registrant's annual registration year before the date of the sale or replacement of the vehicle.

The credit applies to the tax due on any other vehicle purchased or subsequently registered by the owner in the same registrant's annual registration year.

(c) The owner of a vehicle registered in error at a greater weight than required is entitled to receive a credit equal to the commercial vehicle excise tax paid for the vehicle registered at the greater weight. However, no refund may be provided for any remainder of the tax paid when registering the vehicle at a lower weight.

(d) The owner of a vehicle is not entitled to a refund of any part of a credit that is not used under this section.

(e) A credit expires at the end of the registrant's annual registration year.

(f) To claim the credit authorized in subsection (a)(1), the owner of the vehicle must present to the bureau proof of the sale of the vehicle.

(g) To claim the credit authorized in subsection (a)(2), the owner of the vehicle must present to the bureau a statement of proof of the destruction of the vehicle on an affidavit furnished by the bureau. The owner must also present a valid registration for the vehicle within ninety (90) days after the date that it was destroyed. For purposes of this subsection, a vehicle is considered destroyed if the estimated cost of repair exceeds the vehicle's fair market value. After receipt of the statement and registration, the bureau shall fix the amount of the credit that the owner is entitled to receive.



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1       **(h) To claim the credit authorized under subsection (a)(3), the**  
 2       **owner of the vehicle must present to the bureau on an affidavit**  
 3       **furnished by the bureau evidence acceptable to the bureau that the**  
 4       **vehicle was registered in error at a greater weight than required.**

5       SECTION 15. IC 6-8.1-3-14 IS AMENDED TO READ AS  
 6       FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 14. (a) The department,  
 7       on behalf of the state, may enter into **and become a member of the**  
 8       **International Fuel Tax Agreement or other** reciprocal agreements  
 9       providing for the imposition of motor fuel taxes on an apportionment  
 10      or allocation basis with the proper authority of any state, any  
 11      commonwealth, the District of Columbia, a state or province of a  
 12      foreign country, or a territory or possession of either the United States  
 13      or of a foreign country.

14      ~~(b) To implement this section, the department may enter into and~~  
 15      ~~become a member of the Base State Fuel Tax Agreement or any other~~  
 16      ~~fuel tax agreement plan developed by the National Governor's~~  
 17      ~~Association.~~

18      ~~(c)~~ **(b)** The department may adopt rules under IC 4-22-2 to carry out  
 19      and enforce the provisions of the ~~Base State~~ **International** Fuel Tax  
 20      Agreement or any other agreement entered into under this section.

21      ~~(d)~~ **(c)** If the department enters into the ~~Base State~~ **International**  
 22      Fuel Tax Agreement or into any other agreement under this ~~section;~~  
 23      **chapter**, and if the provisions set forth in that agreement or other  
 24      agreements:

- 25          **(1)** are different from provisions prescribed by an Indiana statute,  
 26          then the ~~agreement~~ provisions **of the Indiana statute** prevail; and  
 27          **(2)** are different from provisions prescribed by the Indiana  
 28          Administrative Code, then the provisions of the agreement  
 29          prevail.

30      **This subsection does not affect the operation of IC 6-6-4.1-22,**  
 31      **IC 6-6-4.1-23, IC 6-6-4.1-24, IC 6-6-4.1-25, or IC 6-6-4.1-26.**

32      ~~(e)~~ **(d)** This section constitutes complete authority for the imposition  
 33      of motor fuel taxes upon an apportionment or allocation basis without  
 34      reference to or application of any other statutes of this state.

35      SECTION 16. IC 6-8.1-5-3 IS AMENDED TO READ AS  
 36      FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 3. **(a)** If at any time the  
 37      department finds that a person owing taxes intends to quickly leave the  
 38      state, remove his property from the state, conceal his property in the  
 39      state, or do any other act that would jeopardize the collection of those  
 40      taxes, the department may declare the person's tax period at an end,  
 41      may immediately make an assessment for the taxes owing, and may  
 42      demand immediate payment of the amount due, without providing the



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notice required in IC 6-8.1-8-2.

**(b) If the department has sent a notice of proposed assessment under section 1 of this chapter to a taxpayer by United States mail and the notice is returned to the department because the taxpayer has moved and the department is unable to determine the taxpayer's new address, the department may:**

- (1) declare the person's tax period at an end;**
- (2) immediately make an assessment for the taxes owing; and**
- (3) demand immediate payment of the amount due;**

**without providing the notice required in IC 6-8.1-8-2.**

**(c)** If the payment is not made immediately, the department may issue or request the state police department to serve a jeopardy tax warrant against the person and, either without or with the assistance of the sheriffs of any counties in the state, may levy on and sell the person's property which is located in those counties. In place of the levy and sale procedure, the department may accept from the person a bond for the payment of the taxes, if the bond is in an amount at least equal to the amount of the total liability and if the bond is through a surety acceptable to the department.

SECTION 17. IC 6-8.1-8-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 2. (a) Except as provided in IC 6-8.1-5-3, the department must issue a demand notice for the payment of a tax and any interest or penalties accrued on the tax, if a person files a tax return without including full payment of the tax or if the department, after ruling on a protest, finds that a person owes the tax before the department issues a tax warrant. The demand notice must state the following:

- (1) That the person has ten (10) days from the date the department mails the notice to either pay the amount demanded or show reasonable cause for not paying the amount demanded.
- (2) The statutory authority of the department for the issuance of a tax warrant.
- (3) The earliest date on which a tax warrant may be filed and recorded.
- (4) The remedies available to the taxpayer to prevent the filing and recording of the ~~lien~~ **judgment**.

If the department files a tax warrant in more than one (1) county, the department is not required to issue more than one (1) demand notice.

**(b)** If the person does not pay the amount demanded or show reasonable cause for not paying the amount demanded within the ten (10) day period, the department may issue a tax warrant for the amount of the tax, interest, penalties, collection fee, sheriff's costs, clerk's costs,

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and fees established under section 4(b) of this chapter when applicable. When the department issues a tax warrant, a collection fee of ten percent (10%) of the unpaid tax is added to the total amount due.

(c) When the department issues a tax warrant, it may not file the warrant with the circuit court clerk of any county in which the person owns property until at least twenty (20) days after the date the demand notice was mailed to the taxpayer. The department may also send the warrant to the sheriff of any county in which the person owns property and direct the sheriff to file the warrant with the circuit court clerk:

(1) at least twenty (20) days after the date the demand notice was mailed to the taxpayer; and

(2) no later than five (5) days after the date the department issues the warrant.

(d) When the circuit court clerk receives a tax warrant from the department or the sheriff, the clerk shall record the warrant by making an entry in the judgment debtor's column of the judgment record, listing the following:

(1) The name of the person owing the tax.

(2) The amount of the tax, interest, penalties, collection fee, sheriff's costs, clerk's costs, and fees established under section 4(b) of this chapter when applicable.

(3) The date the warrant was filed with the clerk.

(e) When the entry is made, the total amount of the tax warrant becomes a judgment ~~lien~~ against the person owing the tax. The judgment **creates a lien for taxes in favor of the state that** attaches to all the person's interest in any:

(1) chose in action in the county; and

(2) real or personal property in the county; excepting only negotiable instruments not yet due.

(f) A judgment ~~lien~~ obtained under this section is valid for ten (10) years from the date the ~~lien judgment~~ is filed. The department may renew ~~a lien the judgment~~ for additional ten (10) year periods by filing an alias tax warrant with the circuit court clerk of the county in which the ~~lien judgment~~ previously existed.

(g) A judgment ~~lien arising from a tax warrant~~ in a county may be released by:

(1) the department or by the county sheriff after the ~~lien judgment~~, including all accrued interest to the date of payment, has been fully satisfied; or

(2) the department if the department determines that the tax assessment or the issuance of the tax warrant was in error.

(h) If the department determines that the filing of a tax warrant was

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in error, the department shall mail a release of the judgment ~~lien~~ to the taxpayer and the circuit court clerk of each county where the warrant was filed. The department shall mail the release as soon as possible but no later than seven (7) days after:

(1) the determination by the department that the filing of the warrant was in error; and

(2) the receipt of information by the department that the ~~lien judgment~~ has been recorded under subsection (d).

(i) If the department determines that a judgment ~~lien~~ described in subsection (h) is obstructing a lawful transaction, the department shall mail a release of the ~~lien judgment~~ to the taxpayer and the circuit court clerk of each county where the ~~lien judgment~~ was filed immediately upon making the determination.

(j) A release issued under subsection (h) or (i) must state that the filing of the tax warrant was in error. Upon the request of the taxpayer, the department shall mail a copy of a release issued under subsection (h) or (i) to each major credit reporting company located in each county where the ~~lien judgment~~ was filed.

(k) The commissioner shall notify each state agency or officer supplied with a tax warrant list of the issuance of a release under subsection (h) or (i).

(l) If the sheriff collects the full amount of a tax warrant, the sheriff shall disburse the money collected in the manner provided in section 3(c) of this chapter and then release the ~~lien judgment~~. If a ~~lien judgment~~ has been partially or fully satisfied by a person's surety, the surety becomes subrogated to the department's rights under the ~~lien judgment~~ and the sheriff may not release the ~~lien judgment~~ until the surety's rights under the ~~lien judgment~~ have been satisfied by the person. If a sheriff releases a judgment: ~~lien~~:

(1) before the ~~lien judgment~~ is fully satisfied;

(2) before the sheriff has properly disbursed the amount collected; or

(3) after the sheriff has returned the tax warrant to the department; the sheriff commits a Class B misdemeanor and is personally liable for the part of the ~~lien judgment~~ not remitted to the department.

SECTION 18. IC 6-8.1-8-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 3. (a) The county sheriff of a county shall attempt to levy on and collect a judgment ~~lien~~ **on arising from** a tax warrant in that county for a period of one hundred twenty (120) days from the date the judgment lien is entered, unless the sheriff is relieved of that duty at an earlier time by the department. The sheriff's authority to collect the warrant exists only

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1 while the sheriff holds the tax warrant, and if the sheriff surrenders the  
 2 warrant to the department for any reason the sheriff's authority to  
 3 collect that tax warrant ceases. During the period that the sheriff has  
 4 the duty to collect a tax warrant, the sheriff shall collect from the  
 5 person owing the tax, an amount equal to the amount of the judgment  
 6 lien plus the accrued interest to the date of the payment. Subject to  
 7 subsection (b), the sheriff shall make the collection by garnisheeing the  
 8 person's wages and by levying on and selling any interest in property  
 9 or rights in any chose in action that the person has in the county. The  
 10 Indiana laws which provide relief for debtors by exempting certain  
 11 property from levy by creditors do not apply to levy and sale  
 12 proceedings for ~~tax warrant judgment liens~~. **judgments arising from**  
 13 **tax warrants.**

14 (b) A sheriff shall sell property to satisfy a tax warrant in a manner  
 15 that is reasonably likely to bring the highest net proceeds from the sale  
 16 after deducting the expenses of the offer to sell and sale. A sheriff may  
 17 engage an auctioneer to advertise a sale and to conduct a public  
 18 auction, unless the person being levied files an objection with the clerk  
 19 of the circuit or superior court having the tax warrant within five (5)  
 20 days of the day that the sheriff informs the person of the person's right  
 21 to object. The advertising conducted by the auctioneer is in addition to  
 22 any other notice required by law, and shall include a detailed  
 23 description of the property to be sold. When an auctioneer is engaged  
 24 under this subsection and the auctioneer files a verified claim with the  
 25 clerk of the circuit or superior court with whom the tax warrant is filed,  
 26 the sheriff may pay the reasonable fee and reasonable expenses of the  
 27 auctioneer from the gross proceeds of the sale before other expenses  
 28 and ~~liens the judgment arising from the tax warrant~~ are paid. As  
 29 used in this section, "auctioneer" means an auctioneer licensed under  
 30 IC 25-6.1.

31 (c) The sheriff shall deposit all amounts that the sheriff collects  
 32 under this section, including partial payments, into a special trust  
 33 account for ~~tax warrant judgment lien collections~~. **judgments collected**  
 34 **that arose from tax warrants.** On or before the fifth day of each  
 35 month the sheriff shall disburse the money in the tax warrant judgment  
 36 lien trust account in the following order:

- 37 (1) The sheriff shall pay the department the part of the collections  
 38 that represents taxes, interest, and penalties.
- 39 (2) The sheriff shall pay the county treasurer and the clerk of the  
 40 circuit or superior court the part of the collections that represents  
 41 their assessed costs.
- 42 (3) Except as provided in subdivision (4), the sheriff shall keep





the part of the collections that represents the ten percent (10%) collection fee added under section 2(b) of this chapter.

(4) If the sheriff has entered a salary contract under IC 36-2-13-2.5, the sheriff shall deposit in the county general fund the part of the collections that represents the ten percent (10%) collection fee added under section 2(b) of this chapter.

The department shall establish the procedure for the disbursement of partial payments so that the intent of this section is carried out.

(d) After the period described in subsection (a) has passed, the sheriff shall return the tax warrant to the department. However, if at the end of this period the sheriff is in the process of collecting the ~~lien~~ **judgment arising from a tax warrant** in periodic payments of sufficient size that the ~~lien~~ **judgment** will be fully paid within one (1) year after the date the ~~lien~~ **judgment** was filed, the sheriff may keep the tax warrant and continue collections. When the tax warrant is returned, the department may exercise its collection powers alone, or it may allow the sheriff to continue collections in conjunction with the department. If the department and the sheriff engage in simultaneous collection efforts, the sheriff may retain for disbursement under subsection (c) only the part of the ten percent (10%) collection fee that is applicable to the part of the collections for which the sheriff is responsible. The department shall retain the rest of the collection fee.

(e) Notwithstanding any other provision of this chapter, the department may order a sheriff to return a tax warrant at any time, if the department feels that action is necessary to protect the interests of the state.

(f) This subsection applies only to the sheriff of a county having a consolidated city or a second class city. In such a county, the ten percent (10%) collection fee added under section 2(b) of this chapter shall be divided as follows:

(1) The sheriff may retain for disbursement under subsection (c) forty thousand dollars (\$40,000), plus one-fifth (1/5) of any fees exceeding that forty thousand dollar (\$40,000) amount.

(2) Two-fifths (2/5) of any fees exceeding that forty thousand dollar (\$40,000) amount shall be deposited in the sheriff's department's pension trust fund.

(3) Two-fifths (2/5) of any fees exceeding that forty thousand dollar (\$40,000) amount shall be deposited in the county general fund.

SECTION 19. IC 6-8.1-8-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 4. (a) When the department collects a ~~lien~~ **judgment arising from a tax warrant**, it

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may proceed in the same manner that any debt due the state is collected, except as provided in this chapter. The department may employ special counsel or contract with a collection agency for the collection of a delinquent tax plus interest, penalties, collection fees, sheriff's costs, clerk's costs, and reasonable fees established under subsection (b) if:

- (1) an unsatisfied warrant has been issued by the department; or
- (2) the department received a tax payment by check or other instrument drawn upon a financial institution, and the check or other instrument was not honored by that institution.

(b) The commissioner and the budget agency shall set the fee that the special counsel or collection agency will receive and payment of the fee shall be made after a claim for that fee has been approved by the department.

(c) The fees become due and owing by the taxpayer upon the filing of an amended warrant with the circuit court clerk adding the fee authorized by subsection (b) to the amount of the judgment lien under section 2 of this chapter.

SECTION 20. IC 6-8.1-8-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 5. At any time after a ~~tax warrant~~ judgment ~~lien~~ **arising from a tax warrant** has been recorded, the department may obtain a court order restraining the person owing the tax from conducting business in Indiana. The restraining order is valid as long as the judgment ~~lien~~ remains in effect, but the department may have the order dissolved if it feels that by dissolving the order the ~~lien~~ **judgment** will be easier to collect.

SECTION 21. IC 6-8.1-8-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 8. After a tax warrant becomes a judgment ~~lien~~ under section 2 of this chapter or a tax warrant is returned uncollected to the department under section 3 of this chapter, the department may take any of the following actions without judicial proceedings:

- (1) The department may levy upon the property of the taxpayer that is held by a financial institution by sending a claim to the financial institution. Upon receipt of a claim under this subdivision, the financial institution shall surrender to the department the taxpayer's property. If the taxpayer's property exceeds the amount owed to the state by the taxpayer, the financial institution shall surrender the taxpayer's property in an amount equal to the amount owed. After receiving the department's notice of levy, the financial institution is required to place a sixty (60) day hold on or restriction on the withdrawal of

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1 funds the taxpayer has on deposit or subsequently deposits, in an  
2 amount not to exceed the amount owed.

3 (2) The department may garnish the accrued earnings and wages  
4 of a taxpayer by sending a notice to the taxpayer's employer. Upon  
5 receipt of a notice under this subdivision, an employer shall  
6 garnish the accrued earnings and wages of the taxpayer in an  
7 amount equal to the full amount that is subject to garnishment  
8 under IC 24-4.5-5. The amount garnished shall be remitted to the  
9 department. The employer is entitled to a fee in an amount equal  
10 to the fee allowed under IC 24-4.5-5-105(5). However, the fee  
11 shall be borne entirely by the taxpayer.

12 (3) The department may levy upon and sell property and may:

13 (A) take immediate possession of the property and store it in  
14 a secure place; or

15 (B) leave the property in the custody of the taxpayer;  
16 until the day of the sale. The department shall provide notice of  
17 the sale in one (1) newspaper, as provided in IC 5-3-1-2. If the  
18 property is left in the custody of the taxpayer, the department may  
19 require the taxpayer to provide a joint and several delivery bond,  
20 in an amount and with a surety acceptable to the department. At  
21 any time before the sale, any owner or part owner of the property  
22 may redeem the property from the judgment by paying the  
23 department the amount of the judgment. The proceeds of the sale  
24 shall be applied first to the collection expenses and second to the  
25 payment of the delinquent taxes and penalties. Any balance  
26 remaining shall be paid to the taxpayer.

27 SECTION 22. IC 6-8.1-8-8.5 IS ADDED TO THE INDIANA  
28 CODE AS A NEW SECTION TO READ AS FOLLOWS  
29 [EFFECTIVE JULY 1, 2001]: **Sec. 8.5. (a) For purposes of this**  
30 **chapter, a judgment arising from a tax warrant is enforceable in**  
31 **the same manner as any judgment issued by a court of general**  
32 **jurisdiction.**

33 **(b) The department may initiate proceedings supplementary to**  
34 **execution in any court of general jurisdiction in a county in which**  
35 **a judgment arising from a tax warrant has been recorded.**

36 **(c) Proceedings supplementary to execution on a judgment**  
37 **arising from a tax warrant must be initiated and maintained under**  
38 **the applicable rules of the selected court and under the provisions**  
39 **of IC 34-55-8 that do not conflict with this chapter.**

40 SECTION 23. IC 8-2.1-23-2 IS AMENDED TO READ AS  
41 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 2. The treasurer of state  
42 shall deposit fees collected under this article, **IC 9-20-18-14.5, and**

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1 **IC 9-29-6-5.5** in the motor carrier regulation fund.

2 SECTION 24. IC 9-13-2-6.5 IS ADDED TO THE INDIANA CODE  
3 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
4 1, 2001]: **Sec. 6.5. "Automated vehicle identifier" means an**  
5 **electronic tracking device approved by the commissioner of the**  
6 **department of state revenue for use in connection with special**  
7 **weight permits for extra heavy duty highways under IC 9-20-5.**

8 SECTION 25. IC 9-20-5-7 IS AMENDED TO READ AS  
9 FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 7. The owner or**  
10 **operator of** a vehicle or combination of vehicles having a total gross  
11 weight in excess of eighty thousand (80,000) pounds but less than one  
12 hundred thirty-four thousand (134,000) pounds must:

- 13 (1) obtain a special weight **registration** permit;
- 14 (2) **register annually and pay annually a registration fee to the**  
15 **department of state revenue; and**
- 16 (3) **install an approved automated vehicle identifier in each**  
17 **vehicle operating with a special weight permit;**

18 to travel on an extra heavy duty highway.

19 SECTION 26. IC 9-20-18-14.5 IS ADDED TO THE INDIANA  
20 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
21 [EFFECTIVE JULY 1, 2001]: **Sec. 14.5. (a) The civil penalties**  
22 **imposed under this section are in addition to the other civil**  
23 **penalties that may be imposed under IC 8 and IC 9.**

24 (b) A person who violates IC 9-20-5-7 is subject to a civil penalty  
25 of five hundred dollars (\$500) for each violation as determined by  
26 the court. Notwithstanding section 12 of this chapter, a civil  
27 penalty imposed under this section must be deposited in the motor  
28 carrier regulation fund established under IC 8-2.1-23.

29 (c) A person who operates a vehicle subject to IC 9-20-5-7 on a  
30 route other than a route designated under IC 9-20-5-4 is subject to  
31 a civil penalty of five hundred dollars (\$500) for each violation as  
32 determined by the court. Notwithstanding section 12 of this  
33 chapter, a civil penalty imposed under this section must be  
34 deposited in the motor carrier regulation fund established under  
35 **IC 8-2.1-23.**

36 SECTION 27. IC 9-24-6-6 IS AMENDED TO READ AS  
37 FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 6. (a) The following,**  
38 **if committed while driving a commercial motor vehicle, are serious**  
39 **traffic violations:**

- 40 (1) Operating a vehicle at least fifteen (15) miles per hour above  
41 the posted speed limit in violation of IC 9-21-5, IC 9-21-6, or  
42 IC 20-9.1-5-10.



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(2) Operating a vehicle recklessly as provided in IC 9-21-8-50 and IC 9-21-8-52.

(3) Improper or erratic traffic lane changes in violation of IC 9-21-8-2 through IC 9-21-8-13 and IC 9-21-8-17 through IC 9-21-8-18.

(4) Following a vehicle too closely in violation of IC 9-21-8-14 through IC 9-21-8-16.

(5) In connection with a fatal accident, violating any statute, ordinance, or rule concerning motor vehicle traffic control other than parking statutes, ordinances, or rules.

(6) Operating a vehicle while disqualified under this chapter.

**(7) For drivers who are not required to always stop at a railroad crossing, failing to do any of the following:**

**(A) Slow down and determine that the railroad tracks are clear of an approaching train, in violation of IC 9-21-5-4, IC 9-21-8-39, IC 35-42-2-4, or any similar statute.**

**(B) Stop before reaching the railroad crossing, if the railroad tracks are not clear of an approaching train, in violation of IC 9-21-4-16, IC 9-21-8-39, or any similar statute.**

**(8) For all drivers, whether or not they are required to always stop at a railroad crossing, to do any of the following:**

**(A) Stopping in a railroad crossing, in violation of IC 9-21-8-50 or any similar statute.**

**(B) Failing to obey a traffic control device or failing to obey the directions of a law enforcement officer at a railroad crossing, in violation of IC 9-21-8-1 or any similar statute.**

**(C) Stopping in a railroad crossing because of insufficient undercarriage clearance, in violation of IC 35-42-2-4, IC 9-21-8-50, or any similar statute.**

**(b) Subsection (a)(1) and (a)(8) is intended to comply with the provisions of 49 U.S.C. 31311(a)(10) and regulations adopted under that statute.**

SECTION 28. IC 9-24-6-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 7. **(a) A driver who is convicted of a serious traffic violation while operating involving the operation of a commercial motor vehicle, other than a violation described in section 6(a)(7) or 6(a)(8) of this chapter, is disqualified from driving a commercial motor vehicle as follows:**

**(1) Upon conviction in two (2) separate driving incidents in any three (3) year period, disqualification for sixty (60) days.**



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(2) Upon conviction of a third or subsequent driving incident in any three (3) year period, disqualification for one hundred twenty (120) days.

**(b) This subsection is intended to comply with the provisions of 49 U.S.C. 31311(a)(10) and regulations adopted under that statute. If a driver is convicted of a serious traffic violation involving the operation of a commercial motor vehicle and the conviction is based on any of the violations described in section 6(a)(7) or 6(a)(8) of this chapter, the driver is disqualified from driving a commercial motor vehicle as follows:**

**(1) Upon conviction of a first violation described in section 6(a)(7) or 6(a)(8) of this chapter during any three (3) year period, disqualification for at least sixty (60) days.**

**(2) Upon conviction of a second violation described in section 6(a)(7) or 6(a)(8) of this chapter in separate incidents during any three (3) year period, disqualification for at least one hundred (120) days.**

**(3) Upon conviction of a third or subsequent violation described in section 6(a)(7) or 6(a)(8) of this chapter in separate incidents during any three (3) year period, disqualification for at least one (1) year.**

**SECTION 29. IC 9-29-6-1.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 1.5. (a) The fee for the annual registration required under IC 9-20-5-7 is twenty-five dollars (\$25). The fee imposed under this section must be deposited in the motor carrier regulation fund established under IC 8-2.1-23.**

**(b) The department of state revenue may impose a separate annual fee in an amount that may not exceed one dollar (\$1) on each vehicle registered under IC 9-20-5-7 for the use and maintenance of an automated vehicle identifier. The fee imposed under this subsection is in addition to the permit fee required under section 1 of this chapter. The fee imposed under this section must be deposited in the motor carrier regulation fund established under IC 8-2.1-23.**

**SECTION 30. [EFFECTIVE JULY 1, 2001] IC 6-8.1-8, as amended by this act, applies to all tax collection proceedings that are commenced by the department of state revenue after June 30, 2001, regardless of the date of recording a tax warrant as a judgment under IC-6-8.1-2, as amended by this act.**

**SECTION 31. [EFFECTIVE JULY 1, 2002] IC 6-5.5-6-3, as amended by this act, applies to quarterly financial institutions tax**



1 returns and payments made for a taxpayer's third quarter in  
2 calendar year 2002 and thereafter.

3 SECTION 32. [EFFECTIVE JANUARY 1, 2002] IC 6-3.1-6-1, as  
4 amended by this act, and IC 6-3.1-6-6, as added by this act, apply  
5 to taxable years beginning after December 31, 2001.

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## COMMITTEE REPORT

Mr. Speaker: Your Committee on Ways and Means, to which was referred House Bill 1578, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, delete lines 1 through 17.

Delete pages 2 through 5.

Page 6, delete lines 1 through 40.

Page 8, line 14, reset in roman "ten".

Page 8, line 14, delete "five".

Page 8, line 14, reset in roman "(\$10,000)".

Page 8, line 14, delete "(\$5,000)".

Page 8, delete lines 23 through 42.

Page 9, delete lines 1 through 13.

Page 10, delete lines 27 through 42.

Page 11, delete lines 1 through 39.

Page 6, between lines 40 and 41, begin a new paragraph and insert:  
"SECTION 5. IC 6-3.1-6-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2002]: Sec. 1. For the purposes of this chapter:

"Agreement" means any agreement entered into with the commissioner of the department of correction under IC 11-10-7-2 that has been approved by a majority of the members of the state board of correction.

**"Pass through entity" means a:**

- (1) corporation that is exempt from the adjusted gross income tax under IC 6-3-2-2.8(2);**
- (2) partnership;**
- (3) trust;**
- (4) limited liability company; or**
- (5) limited liability partnership.**

"Qualified property" means any machinery, tools, equipment, building, structure, or other tangible property considered qualified property under Section 38 of the Internal Revenue Code that is used as an integral part of the operation contemplated by an agreement and that is installed, used, or operated exclusively on property managed by the department of correction.

"State income tax liability" means a taxpayer's total income tax liability incurred under IC 6-2.1 and IC 6-3, as computed after application of credits that, under IC 6-3.1-1-2, are to be applied before the credit provided by this chapter.

**"Taxpayer" means any person, corporation, limited liability**

**HB 1578—LS 7956/DI 73+**



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**company, partnership, or other entity that has state tax liability. The term includes a pass through entity.**

"Wages paid" includes all earnings surrendered to the department of correction under IC 11-10-7-5.

SECTION 6. IC 6-3.1-6-6 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2002]: **Sec. 6. If a pass through entity is entitled to a credit under this chapter but does not have state tax liability against which the tax credit may be applied, an individual who is a shareholder, partner, beneficiary, or member of the pass through entity is entitled to a tax credit equal to:**

- (1) the tax credit determined for the pass through entity for the taxable year; multiplied by**
- (2) the percentage of the pass through entity's distributive income to which the shareholder, partner, beneficiary, or member is entitled.**

**The credit provided under this section is in addition to a tax credit to which a shareholder, partner, beneficiary, or member of a pass through entity is entitled. However, a pass through entity and an individual who is a shareholder, partner, beneficiary, or member of a pass through entity may not claim more than one (1) credit for the qualified expenditure."**

Page 18, after line 17, begin a new paragraph and insert:

**"SECTION 23. [EFFECTIVE JANUARY 1, 2002] IC 6-3.1-6-1, as amended by this act, and IC 6-3.1-6-6, as added by this act, apply to taxable years beginning after December 31, 2001."**

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1578 as introduced.)

BAUER, Chair

Committee Vote: yeas 22, nays 1.



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## HOUSE MOTION

Mr. Speaker: I move that House Bill 1578 be amended to read as follows:

Page 8, between lines 40 and 41, begin a new paragraph and insert:

"SECTION 14. IC 6-6-5.5-8.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 8.5. (a) The owner of a vehicle for which the commercial vehicle excise tax has been paid for the registrant's annual registration year is entitled to a credit if during that registration year:**

- (1) the owner sells the vehicle and purchases a new vehicle of the same or greater weight;**
- (2) the vehicle is destroyed and replaced with a vehicle of the same or greater weight; or**
- (3) the vehicle was registered in error at a greater weight than required.**

**(b) Except as provided in subsection (c), the amount of the credit is equal to the remainder of:**

- (1) the commercial vehicle excise tax paid for the vehicle, reduced by;**
- (2) one-twelfth (1/12) for each full or partial calendar month that has elapsed in the registrant's annual registration year before the date of the sale or replacement of the vehicle.**

**The credit applies to the tax due on any other vehicle purchased or subsequently registered by the owner in the same registrant's annual registration year.**

**(c) The owner of a vehicle registered in error at a greater weight than required is entitled to receive a credit equal to the commercial vehicle excise tax paid for the vehicle registered at the greater weight. However, no refund may be provided for any remainder of the tax paid when registering the vehicle at a lower weight.**

**(d) The owner of a vehicle is not entitled to a refund of any part of a credit that is not used under this section.**

**(e) A credit expires at the end of the registrant's annual registration year.**

**(f) To claim the credit authorized in subsection (a)(1), the owner of the vehicle must present to the bureau proof of the sale of the vehicle.**

**(g) To claim the credit authorized in subsection (a)(2), the owner of the vehicle must present to the bureau a statement of proof of the destruction of the vehicle on an affidavit furnished by the bureau. The owner must also present a valid registration for the**

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vehicle within ninety (90) days after the date that it was destroyed. For purposes of this subsection, a vehicle is considered destroyed if the estimated cost of repair exceeds the vehicle's fair market value. After receipt of the statement and registration, the bureau shall fix the amount of the credit that the owner is entitled to receive.

(h) To claim the credit authorized under subsection (a)(3), the owner of the vehicle must present to the bureau on an affidavit furnished by the bureau evidence acceptable to the bureau that the vehicle was registered in error at a greater weight than required."

Page 10, between lines 13 and 14, begin a new paragraph and insert:

"SECTION 16. IC 6-8.1-8-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 2. (a) Except as provided in IC 6-8.1-5-3, the department must issue a demand notice for the payment of a tax and any interest or penalties accrued on the tax, if a person files a tax return without including full payment of the tax or if the department, after ruling on a protest, finds that a person owes the tax before the department issues a tax warrant. The demand notice must state the following:

- (1) That the person has ten (10) days from the date the department mails the notice to either pay the amount demanded or show reasonable cause for not paying the amount demanded.
- (2) The statutory authority of the department for the issuance of a tax warrant.
- (3) The earliest date on which a tax warrant may be filed and recorded.
- (4) The remedies available to the taxpayer to prevent the filing and recording of the ~~lien~~ judgment.

If the department files a tax warrant in more than one (1) county, the department is not required to issue more than one (1) demand notice.

(b) If the person does not pay the amount demanded or show reasonable cause for not paying the amount demanded within the ten (10) day period, the department may issue a tax warrant for the amount of the tax, interest, penalties, collection fee, sheriff's costs, clerk's costs, and fees established under section 4(b) of this chapter when applicable. When the department issues a tax warrant, a collection fee of ten percent (10%) of the unpaid tax is added to the total amount due.

(c) When the department issues a tax warrant, it may not file the warrant with the circuit court clerk of any county in which the person owns property until at least twenty (20) days after the date the demand notice was mailed to the taxpayer. The department may also send the warrant to the sheriff of any county in which the person owns property

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and direct the sheriff to file the warrant with the circuit court clerk:

- (1) at least twenty (20) days after the date the demand notice was mailed to the taxpayer; and
- (2) no later than five (5) days after the date the department issues the warrant.

(d) When the circuit court clerk receives a tax warrant from the department or the sheriff, the clerk shall record the warrant by making an entry in the judgment debtor's column of the judgment record, listing the following:

- (1) The name of the person owing the tax.
- (2) The amount of the tax, interest, penalties, collection fee, sheriff's costs, clerk's costs, and fees established under section 4(b) of this chapter when applicable.
- (3) The date the warrant was filed with the clerk.

(e) When the entry is made, the total amount of the tax warrant becomes a judgment ~~lien~~ against the person owing the tax. The judgment **creates a lien for taxes in favor of the state** that attaches to all the person's interest in any:

- (1) chose in action in the county; and
- (2) real or personal property in the county;

excepting only negotiable instruments not yet due.

(f) A judgment ~~lien~~ obtained under this section is valid for ten (10) years from the date the ~~lien judgment~~ is filed. The department may renew ~~a lien the judgment~~ for additional ten (10) year periods by filing an alias tax warrant with the circuit court clerk of the county in which the ~~lien judgment~~ previously existed.

(g) A judgment ~~lien arising from a tax warrant~~ in a county may be released by:

- (1) the department or by the county sheriff after the ~~lien judgment~~, including all accrued interest to the date of payment, has been fully satisfied; or
- (2) the department if the department determines that the tax assessment or the issuance of the tax warrant was in error.

(h) If the department determines that the filing of a tax warrant was in error, the department shall mail a release of the judgment ~~lien~~ to the taxpayer and the circuit court clerk of each county where the warrant was filed. The department shall mail the release as soon as possible but no later than seven (7) days after:

- (1) the determination by the department that the filing of the warrant was in error; and
- (2) the receipt of information by the department that the ~~lien judgment~~ has been recorded under subsection (d).

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(i) If the department determines that a judgment ~~lien~~ described in subsection (h) is obstructing a lawful transaction, the department shall mail a release of the **lien judgment** to the taxpayer and the circuit court clerk of each county where the **lien judgment** was filed immediately upon making the determination.

(j) A release issued under subsection (h) or (i) must state that the filing of the tax warrant was in error. Upon the request of the taxpayer, the department shall mail a copy of a release issued under subsection (h) or (i) to each major credit reporting company located in each county where the **lien judgment** was filed.

(k) The commissioner shall notify each state agency or officer supplied with a tax warrant list of the issuance of a release under subsection (h) or (i).

(l) If the sheriff collects the full amount of a tax warrant, the sheriff shall disburse the money collected in the manner provided in section 3(c) of this chapter and then release the ~~lien~~ **judgment**. If a **lien judgment** has been partially or fully satisfied by a person's surety, the surety becomes subrogated to the department's rights under the **lien judgment** and the sheriff may not release the **lien judgment** until the surety's rights under the **lien judgment** have been satisfied by the person. If a sheriff releases a judgment: ~~lien~~:

- (1) before the **lien judgment** is fully satisfied;
  - (2) before the sheriff has properly disbursed the amount collected;
- or

(3) after the sheriff has returned the tax warrant to the department; the sheriff commits a Class B misdemeanor and is personally liable for the part of the **lien judgment** not remitted to the department.

SECTION 17. IC 6-8.1-8-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 3. (a) The county sheriff of a county shall attempt to levy on and collect a judgment ~~lien~~ **on arising from** a tax warrant in that county for a period of one hundred twenty (120) days from the date the judgment lien is entered, unless the sheriff is relieved of that duty at an earlier time by the department. The sheriff's authority to collect the warrant exists only while the sheriff holds the tax warrant, and if the sheriff surrenders the warrant to the department for any reason the sheriff's authority to collect that tax warrant ceases. During the period that the sheriff has the duty to collect a tax warrant, the sheriff shall collect from the person owing the tax, an amount equal to the amount of the judgment lien plus the accrued interest to the date of the payment. Subject to subsection (b), the sheriff shall make the collection by garnisheeing the person's wages and by levying on and selling any interest in property

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or rights in any chose in action that the person has in the county. The Indiana laws which provide relief for debtors by exempting certain property from levy by creditors do not apply to levy and sale proceedings for ~~tax warrant judgment liens~~; **judgments arising from tax warrants.**

(b) A sheriff shall sell property to satisfy a tax warrant in a manner that is reasonably likely to bring the highest net proceeds from the sale after deducting the expenses of the offer to sell and sale. A sheriff may engage an auctioneer to advertise a sale and to conduct a public auction, unless the person being levied files an objection with the clerk of the circuit or superior court having the tax warrant within five (5) days of the day that the sheriff informs the person of the person's right to object. The advertising conducted by the auctioneer is in addition to any other notice required by law, and shall include a detailed description of the property to be sold. When an auctioneer is engaged under this subsection and the auctioneer files a verified claim with the clerk of the circuit or superior court with whom the tax warrant is filed, the sheriff may pay the reasonable fee and reasonable expenses of the auctioneer from the gross proceeds of the sale before other expenses and ~~liens the judgment arising from the tax warrant~~ are paid. As used in this section, "auctioneer" means an auctioneer licensed under IC 25-6.1.

(c) The sheriff shall deposit all amounts that the sheriff collects under this section, including partial payments, into a special trust account for ~~tax warrant judgment lien collections~~; **judgments collected that arose from tax warrants.** On or before the fifth day of each month the sheriff shall disburse the money in the tax warrant judgment lien trust account in the following order:

- (1) The sheriff shall pay the department the part of the collections that represents taxes, interest, and penalties.
- (2) The sheriff shall pay the county treasurer and the clerk of the circuit or superior court the part of the collections that represents their assessed costs.
- (3) Except as provided in subdivision (4), the sheriff shall keep the part of the collections that represents the ten percent (10%) collection fee added under section 2(b) of this chapter.
- (4) If the sheriff has entered a salary contract under IC 36-2-13-2.5, the sheriff shall deposit in the county general fund the part of the collections that represents the ten percent (10%) collection fee added under section 2(b) of this chapter.

The department shall establish the procedure for the disbursement of partial payments so that the intent of this section is carried out.



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(d) After the period described in subsection (a) has passed, the sheriff shall return the tax warrant to the department. However, if at the end of this period the sheriff is in the process of collecting the ~~lien~~ **judgment arising from a tax warrant** in periodic payments of sufficient size that the ~~lien~~ **judgment** will be fully paid within one (1) year after the date the ~~lien~~ **judgment** was filed, the sheriff may keep the tax warrant and continue collections. When the tax warrant is returned, the department may exercise its collection powers alone, or it may allow the sheriff to continue collections in conjunction with the department. If the department and the sheriff engage in simultaneous collection efforts, the sheriff may retain for disbursement under subsection (c) only the part of the ten percent (10%) collection fee that is applicable to the part of the collections for which the sheriff is responsible. The department shall retain the rest of the collection fee.

(e) Notwithstanding any other provision of this chapter, the department may order a sheriff to return a tax warrant at any time, if the department feels that action is necessary to protect the interests of the state.

(f) This subsection applies only to the sheriff of a county having a consolidated city or a second class city. In such a county, the ten percent (10%) collection fee added under section 2(b) of this chapter shall be divided as follows:

- (1) The sheriff may retain for disbursement under subsection (c) forty thousand dollars (\$40,000), plus one-fifth (1/5) of any fees exceeding that forty thousand dollar (\$40,000) amount.
- (2) Two-fifths (2/5) of any fees exceeding that forty thousand dollar (\$40,000) amount shall be deposited in the sheriff's department's pension trust fund.
- (3) Two-fifths (2/5) of any fees exceeding that forty thousand dollar (\$40,000) amount shall be deposited in the county general fund.

SECTION 18. IC 6-8.1-8-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 4. (a) When the department collects a ~~lien~~ **judgment arising from a tax warrant**, it may proceed in the same manner that any debt due the state is collected, except as provided in this chapter. The department may employ special counsel or contract with a collection agency for the collection of a delinquent tax plus interest, penalties, collection fees, sheriff's costs, clerk's costs, and reasonable fees established under subsection (b) if:

- (1) an unsatisfied warrant has been issued by the department; or
- (2) the department received a tax payment by check or other



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instrument drawn upon a financial institution, and the check or other instrument was not honored by that institution.

(b) The commissioner and the budget agency shall set the fee that the special counsel or collection agency will receive and payment of the fee shall be made after a claim for that fee has been approved by the department.

(c) The fees become due and owing by the taxpayer upon the filing of an amended warrant with the circuit court clerk adding the fee authorized by subsection (b) to the amount of the judgment lien under section 2 of this chapter.

SECTION 19. IC 6-8.1-8-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 5. At any time after a ~~tax warrant~~ judgment ~~lien~~ **arising from a tax warrant** has been recorded, the department may obtain a court order restraining the person owing the tax from conducting business in Indiana. The restraining order is valid as long as the judgment ~~lien~~ remains in effect, but the department may have the order dissolved if it feels that by dissolving the order the ~~lien~~ **judgment** will be easier to collect.

SECTION 20. IC 6-8.1-8-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 8. After a tax warrant becomes a judgment ~~lien~~ under section 2 of this chapter or a tax warrant is returned uncollected to the department under section 3 of this chapter, the department may take any of the following actions without judicial proceedings:

(1) The department may levy upon the property of the taxpayer that is held by a financial institution by sending a claim to the financial institution. Upon receipt of a claim under this subdivision, the financial institution shall surrender to the department the taxpayer's property. If the taxpayer's property exceeds the amount owed to the state by the taxpayer, the financial institution shall surrender the taxpayer's property in an amount equal to the amount owed. After receiving the department's notice of levy, the financial institution is required to place a sixty (60) day hold on or restriction on the withdrawal of funds the taxpayer has on deposit or subsequently deposits, in an amount not to exceed the amount owed.

(2) The department may garnish the accrued earnings and wages of a taxpayer by sending a notice to the taxpayer's employer. Upon receipt of a notice under this subdivision, an employer shall garnish the accrued earnings and wages of the taxpayer in an amount equal to the full amount that is subject to garnishment under IC 24-4.5-5. The amount garnished shall be remitted to the

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department. The employer is entitled to a fee in an amount equal to the fee allowed under IC 24-4.5-5-105(5). However, the fee shall be borne entirely by the taxpayer.

(3) The department may levy upon and sell property and may:

(A) take immediate possession of the property and store it in a secure place; or

(B) leave the property in the custody of the taxpayer; until the day of the sale. The department shall provide notice of the sale in one (1) newspaper, as provided in IC 5-3-1-2. If the property is left in the custody of the taxpayer, the department may require the taxpayer to provide a joint and several delivery bond, in an amount and with a surety acceptable to the department. At any time before the sale, any owner or part owner of the property may redeem the property from the judgment by paying the department the amount of the judgment. The proceeds of the sale shall be applied first to the collection expenses and second to the payment of the delinquent taxes and penalties. Any balance remaining shall be paid to the taxpayer.

SECTION 21. IC 6-8.1-8-8.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 8.5. (a) For purposes of this chapter, a judgment arising from a tax warrant is enforceable in the same manner as any judgment issued by a court of general jurisdiction.**

**(b) The department may initiate proceedings supplementary to execution in any court of general jurisdiction in a county in which a judgment arising from a tax warrant has been recorded.**

**(c) Proceedings supplementary to execution on a judgment arising from a tax warrant must be initiated and maintained under the applicable rules of the selected court and under the provisions of IC 34-55-8 that do not conflict with this chapter.**

SECTION 22. IC 8-2.1-23-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 2. The treasurer of state shall deposit fees collected under this article, IC 9-20-18-14.5, and IC 9-29-6-5.5 in the motor carrier regulation fund.**

SECTION 23. IC 9-13-2-6.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 6.5. "Automated vehicle identifier" means an electronic tracking device approved by the commissioner of the department of state revenue for use in connection with special weight permits for extra heavy duty highways under IC 9-20-5.**

SECTION 24. IC 9-20-5-7 IS AMENDED TO READ AS



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FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 7. **The owner or operator of a vehicle or combination of vehicles having a total gross weight in excess of eighty thousand (80,000) pounds but less than one hundred thirty-four thousand (134,000) pounds must:**

- (1) obtain a special weight registration permit;**
- (2) register annually and pay annually a registration fee to the department of state revenue; and**
- (3) install an approved automated vehicle identifier in each vehicle operating with a special weight permit;**

to travel on an extra heavy duty highway.

SECTION 25. IC 9-20-18-14.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 14.5. **(a) The civil penalties imposed under this section are in addition to the other civil penalties that may be imposed under IC 8 and IC 9.**

**(b) A person who violates IC 9-20-5-7 is subject to a civil penalty of five hundred dollars (\$500) for each violation as determined by the court. Notwithstanding section 12 of this chapter, a civil penalty imposed under this section must be deposited in the motor carrier regulation fund established under IC 8-2.1-23.**

**(c) A person who operates a vehicle subject to IC 9-20-5-7 on a route other than a route designated under IC 9-20-5-4 is subject to a civil penalty of five hundred dollars (\$500) for each violation as determined by the court. Notwithstanding section 12 of this chapter, a civil penalty imposed under this section must be deposited in the motor carrier regulation fund established under IC 8-2.1-23."**

Page 11, between lines 41 and 42, begin a new paragraph and insert:"

SECTION 18. IC 9-29-6-1.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 1.5. **(a) The fee for the annual registration required under IC 9-20-5-7 is twenty-five dollars (\$25). The fee imposed under this section must be deposited in the motor carrier regulation fund established under IC 8-2.1-23.**

**(b) The department of state revenue may impose a separate annual fee in an amount that may not exceed one dollar (\$1) on each vehicle registered under IC 9-20-5-7 for the use and maintenance of an automated vehicle identifier. The fee imposed under this subsection is in addition to the permit fee required under section 1 of this chapter. The fee imposed under this section must be deposited in the motor carrier regulation fund established**

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**under IC 8-2.1-23.**

**SECTION 19. [EFFECTIVE JULY 1, 2001] IC 6-8.1-8, as amended by this act, applies to all tax collection proceedings that are commenced by the department of state revenue after June 30, 2001, regardless of the date of recording a tax warrant as a judgment under IC-6-8.1-2, as amended by this act."**

Renumber all SECTIONS consecutively.

(Reference is to HB 1578 as printed February 20, 2001.)

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